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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 12 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 94-10

Clayton, Missouri

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of:)
)
THE LUTHERAN CHURCH/MISSOURI SYNOD) MM DOCKET NO. 94-10
)
Clayton, Missouri)

The above-entitled matter come on for hearing pursuant to
Notice before Judge Arthur I. Steinberg, Administrative Law
Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom
No. 3, on Wednesday, June 22, 1994 at 9:30 a.m.

APPEARANCES:

On behalf of the Lutheran Church:

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On behalf of Mass Media:

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Also present:

ERIK WILLIAMS
Institute for Public Representation
Georgetown Law School

I N D E X

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Dennis Stortz					
By Ms. Schmeltzer		459			
By Mr. Honig	460		484		

E X H I B I T S

<u>NAACP</u>	<u>Identified</u>	<u>Received</u>	<u>Withdrawn</u>	<u>Rejected</u>
Exhibit No. 12	441	442		
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<u>Lutheran Church</u>				
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Exhibit No. 10	555	555		
<u>Mass Media Bureau</u>				
Exhibit No. 20			591	
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Hearing Began: 9:30 a.m.		Hearing Ended: 6:15 p.m.		
Lunch Break Began: 12:50 p.m.		Lunch Break Ended: 2:00 p.m.		

P R O C E E D I N G S

1 JUDGE STEINBERG: We're on the record. I understand
2 that there's been some difficulty with one of the witnesses?

3 MS. SCHMELTZER: That's correct, Your Honor.
4 Reverend Bryant Clancy was due in on a late flight last night.
5 His flight was canceled. And so he is on a plane this morning
6 and should be arriving around noon.
7

8 Now we are prepared to go forward with Dennis
9 Stortz. I realize that you didn't want to break up any
10 witness's testimony. So Mr. Stoltz (sic) is available for the
11 whole day, and Bryant Clancy will be coming in at noon. He,
12 he can stay overnight and will be available tomorrow morning.

13 JUDGE STEINBERG: Okay. Let's -- everybody prepared
14 for Mr. Stortz?

15 MR. ZAUNER: Yes, Your Honor.

16 MR. HONIG: Not completely, Your Honor. I was --
17 I'm fully prepared for Reverend Clancy and only partly
18 prepared for Mr. Stortz.

19 MS. SCHMELTZER: Well, you're -- last night Mr.
20 Honig said he only had at most a half hour or hour -- on
21 Reverend Clancy. And he knew that we were going to be putting
22 on Dennis Stortz right after Reverend Clancy.

23 JUDGE STEINBERG: Well --

24 MR. HONIG: Then I --

25 JUDGE STEINBERG: -- I'll give you, I'll give you

1 some leeway. How, how long do, will it take for you to be
2 completely prepared?

3 MR. HONIG: I, I, I'm -- I was prepared to take
4 about the first hour to get through the preliminary matters
5 and to do about an hour and a quarter or so on, on, for Mr.
6 Stortz and then was hoping that we would then take a break.
7 Bureau counsel and I could consult. I could take the lunch
8 hour and tighten it up and, and then get it done. I'm sorry
9 I'm not fully prepared. But, but I just didn't expect that
10 his plane would be canceled. It's no one's fault.

11 MS. SCHMELTZER: As long as we can put Reverend
12 Clancy on tomorrow morning, I don't have any problem with
13 giving Mr. Honig a little time. But I don't really like to
14 delay Reverend Clancy more than until tomorrow morning.

15 JUDGE STEINBERG: That's reasonable.

16 MR. HONIG: I -- although I'd be prepared to do him
17 at any time that's convenient for him.

18 JUDGE STEINBERG: I don't, I don't want to break, I
19 don't -- my preference is we do a whole witness at a time.
20 And I don't like to break it up. Gets very confusing.
21 Everybody loses their train of thought. I forget what I rule.

22 MS. SCHMELTZER: And we do want to proceed with
23 Reverend Devantier right after Reverend Clancy.

24 JUDGE STEINBERG: Right. Yeah. No, let's -- I want
25 to keep things, keep things flowing. Any other preliminary

1 matters?

2 MR. GOTTFRIED: Could you wait --

3 JUDGE STEINBERG: Well, I --

4 MR. GOTTFRIED: -- for the witness to leave the --

5 MS. SCHMELTZER: Did you want Mr. Stoltz to leave?

6 MR. HONIG: Yes.

7 (Asides.)

8 JUDGE STEINBERG: I've got a list of things that I
9 think are ripe for or, or which were supposed to be ripe for
10 discussion this morning. And let me do that first and then if
11 I, there's something else we can, we can discuss that.

12 Okay. The handwritten notes of Mr. Lauher
13 concerning "minorities", you're still looking for those.

14 MS. SCHMELTZER: We have not been able to locate
15 that anywhere.

16 JUDGE STEINBERG: Okay. Has anybody -- are they,
17 are they still looking?

18 MS. SCHMELTZER: They're still looking --

19 JUDGE STEINBERG: Okay, so that's an ongoing. Mrs.
20 Schmeltzer requested move to compel notes and documents
21 concerning interviews and with Ms. Hutchinson, Mr. Woodard and
22 Mr. Miller.

23 MR. HONIG: I have a partial response. I talked to
24 the attorney at the National Headquarters who supervises me
25 last night. And he -- his view of it is, is only the general

1 counsel can, can waive lawyer-client privilege in the
2 production of documents. The motions and so on I can do. But
3 he's got to make that decision. My supervisor intended to ask
4 him, but I was unable to reach him this morning. So I don't
5 know what the answer is.

6 He did say that maybe that I should try to button
7 down which of three categories are, we're talking about.
8 Documents that the witnesses gave to us from their files I
9 think are appropriate for us to exchange, and we can assemble
10 those and exchange it. Mr. Blanton is, is faxing those to me
11 this morning. I don't physically have them though. I will be
12 able to produce those tomorrow.

13 Documents that we gave to the witnesses or there's
14 another category, and I wanted to know what Your Honor's
15 intentions were as to that. And documents that Mr. Blanton
16 and I gave to each other or wrote to ourselves is the other
17 category. And I wanted to know just to make sure that my, our
18 general counsel understands what your view is as to those two
19 categories.

20 JUDGE STEINBERG: Okay, let me ask Mrs. Schmeltzer.
21 Documents that witnesses gave to Mr. Honig --

22 MS. SCHMELTZER: I think those --

23 JUDGE STEINBERG: -- you want those.

24 MS. SCHMELTZER: -- those are appropriate, and it's
25 not protected by attorney-client privilege. Witnesses are not

1 Mr. Honig's clients.

2 MR. HONIG: I don't disagree with that.

3 JUDGE STEINBERG: Okay. So you will turn them over
4 to opposing counsel both Bureau and if -- do you want them,
5 Mr. Zauner?

6 MR. ZAUNER: Yes, Your Honor.

7 JUDGE STEINBERG: But when I say opposing counsel, I
8 mean both. As soon as you get them within -- obviously if you
9 get them at midnight, I don't expect you to go dragging around
10 to Mr. Zauner's house and Mr., Ms. Schmeltzer's house. But,
11 but you know, just bring them with you --

12 MR. HONIG: Sure.

13 JUDGE STEINBERG: And exchange them as expeditiously
14 as possible.

15 MR. HONIG: Okay.

16 JUDGE STEINBERG: Second, documents the NAACP gave
17 to witnesses.

18 MS. SCHMELTZER: I guess there, there might be two
19 categories of those. They may be documents the NAACP gave the
20 witnesses from their files that are not protected by -- they
21 may be public documents and not protected by attorney-client
22 privilege or work product, and they were given out to a third
23 party. Those would be producible. The documents that --
24 other documents the NAACP gave the witness could fall into the
25 work product category in which case I think they should be

1 | turned over to Your Honor --

2 | MR. HONIG: Your Honor, the question I normally get
3 | asked is what is the relevance of any conceivable such
4 | document to the issues in this case. And what's important I
5 | think is what the witnesses signed. For example, if you give
6 | a draft of something to a witness, and the witness says I
7 | don't want, I don't want it that way, I want it another way, I
8 | think that what the person can be cross-examined on is what
9 | they signed, not what they didn't sign. They didn't sign a
10 | lot of things.

11 | JUDGE STEINBERG: Well, let me, you know, let me
12 | just say -- you're talking about draft statements.

13 | MR. HONIG: For example.

14 | JUDGE STEINBERG: Draft statements for example.
15 | Without specifically looking up the law, that probably would
16 | be attorney work product. But if there's a motion to compel,
17 | then I would have to look at it and make that, look at the
18 | documents and make that determination.

19 | MR. HONIG: I also --

20 | JUDGE STEINBERG: You know, but I'm, you know, I'm
21 | saying I have files in my office and I, you know, I can
22 | research it, etc., etc. And I, you know, I know the attorney
23 | work product. I just can't remember at this, the incident
24 | this instant. But what documents that you gave to the
25 | witnesses that are public information, do you have any

1 objection to turning those over?

2 MR. HONIG: I don't know that there were any. But
3 Mr. Blanton might have turned over the -- actually, I'm not
4 sure there were any. There -- I'm, I'm -- there may have been
5 one, but I don't know if it was given to one of these
6 witnesses.

7 JUDGE STEINBERG: Okay. Well, just -- we're talking
8 about Hutchinson, Woodard and Miller. So it's a pretty --

9 MR. HONIG: Yeah.

10 JUDGE STEINBERG: -- it's a tight universe.

11 MR. HONIG: I'll have to check.

12 JUDGE STEINBERG: So documents which were public
13 information why don't you turn over if there were any. If
14 there weren't any just, just let opposing counsel know that
15 there weren't any.

16 Documents such as draft statements and things like
17 that, do you want to move to compel, and then I'll look at it
18 in camera? Or do you just want to --

19 MS. SCHMELTZER: Yes, I would move to compel and
20 have you look at them in camera.

21 JUDGE STEINBERG: Okay. Why don't you turn those
22 over for in camera inspection if any. There might not be any.

23 MR. HONIG: I'm -- I think there's at least one.
24 And -- I know there's at least one. And the one question I
25 know I'm going to get asked also is if I turn it over for in

1 camera inspection, and you decide that it is producible and --

2 JUDGE STEINBERG: You have an immediate right to
3 appeal. The rules provide that you can appeal to the Review
4 Board. And it doesn't get disclosed during the pendency of
5 the appeal.

6 MR. HONIG: Right. And then if the appeal is
7 denied, then my choice is, is either to then produce it,
8 appeal further or withdraw the witness. Is that, is that
9 right?

10 JUDGE STEINBERG: I don't know. Usually it never
11 gets further than that. Usually --

12 MR. HONIG: It might --

13 JUDGE STEINBERG: -- usually if your appeal is
14 denied, most lawyers say oh, take the damn thing. Pardon my
15 French. And, and they don't -- it's not worth going further
16 usually.

17 MR. HONIG: Yeah. That's usually --

18 JUDGE STEINBERG: And if, and if your appeal is
19 sustained they don't have a, you know, there's no right --

20 MR. HONIG: Yeah.

21 JUDGE STEINBERG: -- for them to appeal a ruling
22 adverse to them. But that's, you know, we're talking way down
23 the road.

24 MR. HONIG: Yeah. That's usually what I would do
25 too. But this client has somewhat stricter procedures on

1 | those things than most clients do. So they want me to be very
2 | careful.

3 | JUDGE STEINBERG: Okay. Third category, documents
4 | between Mr. Blankton (sic) and Mr. Honig.

5 | MS. SCHMELTZER: If, if there were notes of
6 | interviews with the witness, then I think that those are
7 | producible. They should be -- if, if Mr. Honig is claiming
8 | work product, I haven't heard those words out of him, then I
9 | think they should be reviewed in camera.

10 | JUDGE STEINBERG: Okay. You, you are claiming work
11 | product on those, correct?

12 | MR. HONIG: I'm claiming work product. And, and
13 | Judge, I don't understand why we're going through this.
14 | There's no -- I've never had to produce work product unless
15 | there was an issue in a case going to whether an applicant,
16 | for example, in a comparative hearing consulted with me on
17 | something that they shouldn't have done. And, and we are the
18 | applicant in this case. I, I don't understand why we should
19 | be talking about my work product being producible at all.

20 | MS. SCHMELTZER: I, I think the point here is that
21 | we had no notice of these witnesses until your direct case
22 | exhibits were exchanged.

23 | JUDGE STEINBERG: Rebuttal case.

24 | MS. SCHMELTZER: Accordingly, we had no ability to
25 | depose them, Mr. Honig.

1 MR. HONIG: What does that have to do with whether
2 the privilege applies?

3 JUDGE STEINBERG: Well, the privilege -- it's either
4 work product or it's not work product. I mean -- and these,
5 these are materials that Mrs. Schmeltzer asked for in
6 interrogatory, interrogatory 2. And you said there were no
7 such documents at that time. Now there are. And, and
8 since -- this is an appropriate time for her to raise that
9 matter.

10 You're, you're under a continuing obligation to, to
11 notify her as to individuals with relevant knowledge of the
12 facts, you know, whatever the magic language is, and to
13 produce documents. And you did notify her by your rebuttal
14 case. And now we're talking about the documents. And these
15 are -- this is in essence her discovery with respect to these
16 three witnesses. And this has been the only opportunity or
17 the first opportunity that she's had to raise these things
18 inasmuch as your answers to interrogatories 1 and 2 were we
19 don't know of anybody, and there are no such documents. So
20 she's just -- I mean that's the way I view it.

21 MR. HONIG: I just needed to be able to
22 understand --

23 JUDGE STEINBERG: Okay.

24 MR. HONIG: -- the clients.

25 JUDGE STEINBERG: And you know, let me tell you, I

1 want to expedite this as much as possible. So as soon as you
2 get the documents to me for in camera inspection, at the --
3 like over lunch that -- like if you produce them tomorrow
4 morning or this afternoon --

5 MR. HONIG: I'll, I'll try and do it tomorrow.
6 Again, I want to be careful and make sure that the, that the
7 client understands what's being done before I do it which
8 means I'll, I'll probably be able to do it --

9 JUDGE STEINBERG: Yeah.

10 MR. HONIG: -- tomorrow morning.

11 JUDGE STEINBERG: And -- okay. And then, and then I
12 will, will probably over lunch take a look at them and come in
13 with an oral ruling. And then with a brief order, maybe a
14 brief order confirming it, maybe not.

15 I mean, you know, generally documents reflecting
16 notes of Mr. Blankton's (sic) interviews, notes between you
17 and Mr. Blankton, etc., etc., that's usually always work
18 product. And -- because it contains your mental impressions
19 and obviously prepared for purposes of litigation and, and the
20 information is available elsewhere from the witnesses if
21 they're called.

22 But, but I'm, you know, I'm just -- I haven't -- not
23 having seen the documents, I don't know. But I'm just telling
24 you what, what usually happens.

25 Okay. That -- so we're on schedule. At least so

1 we're, we're proceeding along on that.

2 The next thing was an outline of Mr. Miller's
3 testimony.

4 MR. HONIG: I have it.

5 JUDGE STEINBERG: Okay. Now did -- can you exchange
6 it? I don't want it.

7 MR. HONIG: You don't want it?

8 JUDGE STEINBERG: No. I want -- I don't think
9 it's -- does anybody think it's appropriate for me to have it?

10 MR. HONIG: I don't mind if you have it.

11 JUDGE STEINBERG: Does anybody mind if I have it?

12 MS. SCHMELTZER: May we just review it first or --

13 JUDGE STEINBERG: Yeah.

14 UNIDENTIFIED SPEAKER: Seen it.

15 (Asides.)

16 JUDGE STEINBERG: Mr. Miller, Richard Miller. Okay.
17 Would you like to introduce your associate for the record?

18 MR. HONIG: Yes. Not my associate yet. Maybe
19 someday. This is Erik Williams from the Institute for Public
20 Representation at Georgetown Law School, third-year student at
21 Georgetown, who's here to, to --

22 JUDGE STEINBERG: Well, welcome. And I hope we keep
23 you entertained.

24 MR. WILLIAMS: Thank you.

25 JUDGE STEINBERG: And feel free to fall asleep.

1 (Pause. Asides.)

2 JUDGE STEINBERG: We can go off the record while
3 this is going on.

4 (Back on the record.)

5 JUDGE STEINBERG: Are we on the record?

6 MS. SCHMELTZER: We were talking about the --

7 JUDGE STEINBERG: For 20 minutes, right? Somebody
8 want to tell me what, what happened in these, these 20 lost
9 minutes?

10 MR. HONIG: Bob negotiated this, so let them do the
11 honors. Okay.

12 MS. LADEN: You do it. Go ahead.

13 MR. HONIG: Oh, did you want -- okay.

14 MS. SCHMELTZER: I can talk about my client's issue.

15 MS. LADEN: You want to give this --

16 MR. ZAUNER: Your Honor, Your Honor has not yet seen
17 a copy of the memorandum regarding the testimony of Richard
18 Miller. I think it would be appropriate at this time to show
19 you a copy.

20 (Pause.)

21 JUDGE STEINBERG: Thank you.

22 MR. ZAUNER: You're welcome.

23 (Pause.)

24 JUDGE STEINBERG: Okay. I just -- I, I can't quote
25 from it but --

1 MR. ZAUNER: Your Honor, the Bureau last night
2 engaged in an extensive interview of Richard Miller. And in
3 the course of that interview, we ascertained that he would
4 testify essentially as represented in this memorandum that has
5 been prepared by the NAACP. In light of that, the Bureau
6 would be willing to, to stipulate that if Mr. Miller were
7 called upon to testify here in this proceeding that he would
8 testify in fact as stated in the memorandum. That being the
9 case, the Bureau would have no objection to this memorandum
10 going in as the testimony of Mr. Miller.

11 It's the Bureau's understanding from talking to
12 other counsel in this room that counsel for the Church would
13 be willing to allow this memorandum to go in under the same
14 circumstances and that the NAACP would also not object to the
15 memorandum going in in place of the testimony of, live
16 testimony of Mr. Miller.

17 There is only one further matter that the Bureau
18 would request. And that is that the proposed memorandum does
19 not provide any background on Mr. Miller, who he is and what
20 his experience is in the market. I have been informed by
21 counsel for the NAACP that he is in the process of obtaining a
22 resume of Mr. Miller and that he would offer that resume at
23 some future date if he receives it. If he does not receive
24 it, he would prepare a short statement giving the basic
25 background of Mr. Miller. It's my understanding that, that

1 this resume would, would not expand on the testimony of Mr.
2 Miller but merely give background information on him so that
3 we could evaluate what's contained in the memorandum based
4 upon that additional resume information.

5 JUDGE STEINBERG: Okay. Is that correct, Mrs.
6 Schmeltzer?

7 MS. SCHMELTZER: Well, we have certain reservations,
8 Your Honor. First of all, I find this information totally
9 irrelevant. I don't see that it is rebutting anything in this
10 case. The fact that Peter, that the station relied on Peter
11 Cleary for advice does not in any way generate this kind of
12 rebuttal evidence -- it's idle to, to listen to what an
13 experienced person in the classical music industry said to
14 them. And you know, moreover, it, the station's position with
15 respect to hiring classical people evolved over the years as
16 the testimony suggests. And, and I don't see that Mr. Honig
17 is, is rebutting anything with this very vague, general
18 statement. So I do have a relevance objection.

19 JUDGE STEINBERG: Okay. Now let me just take that.
20 I ruled on that yesterday in broad outline, you know, based
21 on, on the three areas that, that Mr. Honig indicated Mr.
22 Miller would testify with respect to. And I don't see
23 anything in the memorandum which causes me to, to revisit that
24 ruling. But it's, you know, it's preserved for appeal.

25 MS. SCHMELTZER: I, I do have a specific objection

1 to the sentence on page 2 that says, "These days every major
2 broadcast company has managed to comply with EDO rules and
3 doesn't rely on excuses." As Mr., this witness is not
4 competent to speak to that. And in fact, a lot of broadcast
5 companies have had difficulties complying with EDO rules.
6 That's well documented in the Commission's files.

7 MR. HONIG: Your Honor, I would have no objection to
8 specifying that this comes in as the witness's opinion as did
9 other statements of opinion. And the, the validity of the
10 opinion I think is a subject for findings after we see how
11 from his, the witness's resume what his background has been.

12 JUDGE STEINBERG: Okay. I'll, I'll accept that
13 sentence as the witness's opinion and only the opinion and not
14 the truth of the, of the statement he makes.

15 MS. SCHMELTZER: Now with respect, with respect to
16 the other comments that were made by Mr. Zauner and Ms. Laden
17 we, we are willing to enter into that stipulation. However,
18 we have not seen the resume. I, I really would prefer to have
19 a short statement now as to Mr. Miller's qualifications and
20 reach stipulation on that point rather than to have to await
21 something that I haven't seen.

22 JUDGE STEINBERG: I -- well, I thought Mr. Honig
23 outlined it in the very beginning, but I don't remember it.

24 MS. SCHMELTZER: I thought he did too. And I don't
25 know why --

1 JUDGE STEINBERG: Yeah.

2 MS. SCHMELTZER: -- we can't reach that, leave this
3 matter open.

4 MR. ZAUNER: And Your Honor, just for the --

5 JUDGE STEINBERG: Okay, let me just hear, let me
6 just hear -- oh, why don't you continue, Mr. Zauner?

7 MR. ZAUNER: I was going to say just for the record,
8 Your Honor, I would like to note that as part of our interview
9 last night with Mr. Miller, we also went into his background
10 and confirmed some of the information that I, that Mr. Honig
11 has already stated in the record.

12 JUDGE STEINBERG: Why don't you put it in the record
13 at this point. I've forgotten it.

14 MR. HONIG: He has -- he's 60 years old. He's a
15 retired station owner. He's owned at various times five radio
16 stations including KRJY-FM in St. Louis which had an oldies
17 format. He got into radio ownership in 1970. St. Louis has
18 been his base of operations. And he supervised or hired
19 dozens or hundreds of salespeople and announcers over the
20 years.

21 MS. SCHMELTZER: That's fine.

22 MR. ZAUNER: Your Honor, that --

23 JUDGE STEINBERG: Do you have anything to add based
24 upon your notes?

25 MS. LADEN: Your -- if I may jump in, Your Honor, I

1 spoke with Mr. Miller --

2 JUDGE STEINBERG: Jump away.

3 MS. LADEN: There is only that -- what Mr. Honig has
4 gone through is, is in agreement with what Mr. Miller told us.
5 There is one thing that I would add. He told us that he has
6 been a broadcaster since 1958 and, and acquired his first
7 station as an owner when he was 25 years old. That's
8 consistent with what Mr. Honig described. I don't remember
9 anything else about his background.

10 JUDGE STEINBERG: Okay. Mrs. Schmeltzer --

11 MS. SCHMELTZER: That's fine.

12 JUDGE STEINBERG: Okay. Why don't we mark this as
13 an NAACP --

14 MR. HONIG: NAACP 65.

15 JUDGE STEINBERG: Why don't we use one of the
16 reserve numbers? How about that? Keep all the witnesses --

17 MR. HONIG: Oh, that's right. Let's make it 12.

18 MS. SCHMELTZER: Twelve.

19 JUDGE STEINBERG: Yeah, see. Occasionally I have a
20 good idea.

21 MR. HONIG: I don't have a cover sheet for it but
22 I'll, I'll bring one.

23 JUDGE STEINBERG: Okay. You -- I don't think you
24 need a cover sheet.

25 MR. HONIG: Oh, okay.

1 JUDGE STEINBERG: Okay. So let me just --

2 MS. SCHMELTZER: I have one other --

3 JUDGE STEINBERG: Okay.

4 MS. SCHMELTZER: -- caveat. And that is that we're
5 agreeable to this. However, we know that Mr. Honig is turning
6 over some documents and, and do reserve the right to do cross
7 should it be necessary as a result of the documents that is --

8 JUDGE STEINBERG: Okay, let me just -- yeah, this --
9 that's fair.

10 MR. HONIG: I'm a bit puzzled. If it's being
11 admitted into evidence, I, I think that discovery is moot. We
12 now have the testimony. And since the purpose of the, of
13 discovery is to get information for cross-examination, if
14 they're waiving cross-examination it moots discovery, Your
15 Honor.

16 JUDGE STEINBERG: You waiving -- I mean by, by
17 entering into this stipulation -- essentially, correct me if
18 I'm wrong, my impression of what went on is instead of having
19 Mr. Miller come in and take the stand and say all of this,
20 we're going to, we're going to use this as a declaration, as
21 the equivalent of a declaration. And my impression was okay,
22 so now Mr. Miller won't come in and testify on direct
23 examination. But if they want to cross-examine on any of this
24 information, they may. If that is not what you agree to --

25 MR. HONIG: It didn't come up.

1 JUDGE STEINBERG: Oh, okay.

2 MR. HONIG: I'm just -- I was getting a --

3 JUDGE STEINBERG: Maybe I should have kept my mouth
4 shut.

5 MR. HONIG: No, I just wanted to get a
6 clarification. Because I assume that if there's, if there is
7 a witness statement stipulated and admitted into evidence,
8 discovery as to that is, is over. And --

9 MS. SCHMELTZER: We'll agree, we'll agree with Mr.
10 Honig's tradition. But Your Honor, I do believe I'm entitled
11 to put on surrebuttal with the existing witnesses that are
12 going to be here, Mr. Stortz and Mr. Devantier. I would like
13 to put on a little surrebuttal with respect to -- or I may
14 want to with respect to Mr. Miller.

15 JUDGE STEINBERG: Oh, I see. Okay, so let's --

16 MS. SCHMELTZER: I may want to. I'm not --

17 JUDGE STEINBERG: -- let's do, let's do one thing at
18 a time.

19 MR. HONIG: Of course, the difficulty with that is
20 that normally Mr. Miller would have been rebutting the
21 testimony that we're about to hear which I now have not heard.
22 And if, if something comes out --

23 JUDGE STEINBERG: Okay, wait. We'll, we'll -- I'll
24 take care of that. I'll -- trust me.

25 MR. HONIG: Okay.

1 JUDGE STEINBERG: Okay. Let's do one thing at a
2 time. We have a two-page document, and I'm going to -- and
3 it's -- the memorandum re testimony of Richard Miller is the
4 name of it.

5 MS. SCHMELTZER: I think it was identified or --

6 JUDGE STEINBERG: No. I don't -- no, this wasn't
7 identified at all. Okay. It's a two-page document, and we'll
8 call it memorandum re testimony of Richard Miller. And it
9 will be marked for identification as NAACP Exhibit 12.

10 Now based on the discussion that we have, that we
11 have just had, I will receive this exhibit received NAACP
12 Exhibit 12 as a stipulation among the parties as to Mr.
13 Miller's testimony. Does anybody have any objection to that,
14 Mrs. Schmeltzer?

15 (Whereupon, the document referred to
16 as NAACP Exhibit No. 12 was marked
17 for identification.)

18 MS. SCHMELTZER: No. But I do have a question as to
19 whether if -- and I'm not even sure I'm going to have some
20 surrebuttal on Mr. Miller --

21 JUDGE STEINBERG: Well, well, okay.

22 MS. SCHMELTZER: And with my relevance objection --

23 JUDGE STEINBERG: Okay, yeah. Your relevance -- of
24 course that's preserved. Mr. Honig, is that agreeable to you?

25 MR. HONIG: Yes.

1 JUDGE STEINBERG: Mr. Zauner?

2 MR. ZAUNER: Yes.

3 JUDGE STEINBERG: Okay. So now we've taken care of
4 the testimony of Richard Miller. And I thank you very much
5 for that. So we can cross Mr. Miller off the list.

6 (Whereupon, the document referred to
7 as NAACP Exhibit No. 12 was received
8 into evidence.)

9 MS. SCHMELTZER: Can I speak to the Ms. Hutchinson
10 and Mr. Woodard, Your Honor?

11 JUDGE STEINBERG: Yeah. Do you want to do that now,
12 or do you want to do it later?

13 MS. SCHMELTZER: I think it would be helpful to --

14 MR. HONIG: Do it now.

15 JUDGE STEINBERG: Because, because that was on my
16 list too.

17 MS. SCHMELTZER: I think that would be helpful to do
18 that --

19 JUDGE STEINBERG: Okay. Also now, now -- well, just
20 while we're on Mr. Miller, Mr. Honig, you don't have to turn
21 over any documents with respect to Mr. Miller. So now we're,
22 we're down to Ms. Hutchinson and Mr. Woodard. Okay.

23 MS. SCHMELTZER: All right. We would be willing to
24 stipulate in the testimony that's been received -- I'm sorry.
25 We would be willing to waive cross-examination with respect to